



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-037-FOR; Docket ID: OSM-2021-0006;  
S1D1S SS08011000 SX064A000 222S180110;  
S2D2S SS08011000 SX064A000 22XS501520]

#### Montana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period reopening and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are reopening the public comment period due to the receipt of revisions to a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana is proposing revisions to the Administrative Rules of Montana pertaining to ownership and control and the applicant violator system. These changes were required by a March 30, 2023 letter from OSMRE to Montana (hereinafter, issue letter) after our review of Montana's original July 28, 2021 proposed amendment submittal. The July 28, 2021 proposed amendment submittal by Montana was the result

of an October 2, 2009, letter from OSMRE to Montana (hereinafter, 732 letter), and were necessitated by a Senate bill approved by the 2013 Montana Legislature. This document gives the times and locations that the Montana program and this revised proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the revised amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Mountain Daylight Time (MDT), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., MST on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by SATS No. MT-037-FOR, by any of the following methods:

- Mail/Hand Delivery: 100 East B Street, Room 4100, Casper, WY 82601
- *Fax:* (307) 421-6552
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2021-0006. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Denver Field Division or the full text of the program amendment is available for you to read at [www.regulations.gov](http://www.regulations.gov).

Jeffrey Fleischman, Chief, Denver Field Division  
Office of Surface Mining Reclamation and Enforcement  
Dick Cheney Federal Building  
POB 11018, 100 East B Street, Casper, Wyoming 82601  
Telephone: (307) 261-6550  
E-mail: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov)

In addition, you may review a copy of the amendment during regular business hours at the following location:

Dan Walsh, Chief, Coal and Opencut Mining Bureau  
Montana Department of Environmental Quality  
P.O. Box 200901, Helena, Montana, 59620-0901  
Telephone: (406) 444-6791  
E-mail: [dwalsh@mt.gov](mailto:dwalsh@mt.gov)

**FOR FURTHER INFORMATION CONTACT:**

Howard Strand

Office of Surface Mining Reclamation and Enforcement

One Denver Federal Center, Building 41

Lakewood, CO 80225-0065

Telephone: (303) 236-2931

E-mail: *hstrand@osmre.gov*

## **SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

### **I. Background on the Montana Program**

Subject to OSMRE's oversight Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

## **II. Description of the Proposed Amendment**

On October 28, 1994, December 19, 2000, and December 3, 2007, OSMRE promulgated final rules that adopted or revised certain regulatory definitions and provisions pertaining to review of applications, permit eligibility, application information, applicant, operator, and permittee information, automated information entry and maintenance, permit suspension and rescission, ownership and control findings and challenge procedures, transfer, assignment, or sale of permit rights, and alternative enforcement. Pursuant to 30 CFR 732.17(d), OSMRE notified Montana on October 2, 2009 with a 732 letter, requiring Montana to modify its regulatory program to remain consistent with revised Federal requirements. The 2013 Montana Legislature approved Senate Bill 92, which added language addressing the required changes. Specifically, Senate Bill 92 added language in Section 82-4-227, Montana Code Annotated (MCA), that provided appeal rights pertaining to ownership or control listings in the applicant violator system.

By letter dated July 28, 2021 (FDMS Document ID No. OSM-2021-0006-0001), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) that proposed revisions to existing Administrative Rules of Montana (ARM) that would satisfy the statutory changes in the MCA, including revisions to 17.24.301, 17.24.302, 17.24.303, 17.24.416, 17.24.418. New provisions in the ARM proposed by Montana that would satisfy the statutory changes in the MCA include 17.24.1229, 17.24.1264, 17.24.1265, 17.24.1266, and 17.24.1267. Montana also proposed minor revisions to existing ARM that were unrelated to Senate Bill 92.

OSMRE reviewed the proposed changes to the MCA and ARM, on March 30, 2023, sent Montana an issue letter outlining five areas of concern with their proposed changes to the ARM, including numerous typos and grammatical errors, requiring specific

information of the applicant in permit application packages, applying willful or knowing standards for liability regarding characterizing criminal penalties and civil actions, and adding clarifier language to remain as effective and consistent with Federal counterpart rules. By letter dated May 3, 2023, Montana responded and agreed to address all five areas of concern by formally resubmitting the required revisions to the ARM. Montana agreed to making all the necessary typographical and grammatical errors in addition to the other required changes explained above. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at [www.regulations.gov](http://www.regulations.gov).

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### *Electronic or Written Comments*

If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be

included in the docket for this rulemaking and considered.

### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., MDT on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## **IV. Statutory and Executive Order Reviews**

### *Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

### *Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make



the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR part 926**

Intergovernmental relations, Surface mining, Underground mining.

---

David Berry, Regional Director

Western Region

[FR Doc. 2023-16847 Filed: 8/4/2023 8:45 am; Publication Date: 8/7/2023]